Petition

Supreme Court, U.S.
FILED
FEB 12 1982
ALEXANDER L. STEVAS,
CLERK

81-1525

No. ———

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

———

EDDIE THOMPSON, JR.
Plaintiff-Petitioner,

vs.

MARY ANN WOLTENBERG,
Defendant-Respondent.

———

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

———

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I hereby certify that 3 copies of the foregoing Petition have been served upon Mr. James L. Dickinson, Assistant Kentucky Attorney General, Capitol Building, Frankfort, Kentucky 40601; and Mr. William F. Smith, United States Attorney General, Washington, DC, by the United States mail this ..... day of February 1982.

.....
EDDIE THOMPSON, JR., Pro Se

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTIONS PRESENTED

1. Does the doctrine of judicial immunity bar a claim against a Deputy Court Clrek who has wilfully and wrongfully conspired to deprive Petitioner of his liberty and property, in contravention of the due process clause of the United States Constitution 5th and 14th Amendments?

2. May a Deputy Court Clerk authorize detention of a person, where no Judge has signed an order committing that person to jail?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No. ———

EDDIE THOMPSON, JR.
Plaintiff-Petitioner,

vs.

MARY ANN WOLTENBERG,
Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, Eddie Thompson, Jr., respectfully prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above styled case on September 14, 1981; Rehearing denied on November 19, 1981.

OPINION BELOW

The Order of the Court of Appeals is attached to this Petition as Appendix Pages 2a-3a. The Order denying Petition for Rehearing is attached as Appendix Page 1a.

The Memorandum Opinion and Judgment of the District Court is attached as Appendix Pages 5a-6a, and 7a, respectively. The Order denying Motion for Reconsideration and Motion to Add Defendant is attached as Appendix Page 4a. No Mandate had issued from the Court of Appeals as of February 1, 1982.

JURISDICTION

The Order of the Court of Appeals is attached to this Petition as Appendix Pages 2a-3a. A timely Petition for Rehearing was denied on November 19, 1981, Appendix Page 1a, and this Petition for Certiorari was filed within ninety days of that date.

The Court's jurisdiction is invoked pursuant to 28 U.S.C. 1254 (1).

STATEMENT

The instant action is a pro se complaint alleging inter alia a conspiracy: (1) to unlawfully incarcerate Thompson (Petitoner) without due process of law, and (2) to deny Thompson (Petitioner) an Appeal. Ky. Const. Sec. 115.

As a result of the malevolent acts, Thompson (Petitioner) was deprived of liberty and property in contravention of the 5th and 14th Amendments to the United States Constitution.

The source of our complaint originated in the Kenton District Court. Summarily, in Case 78-M-1186, Thompson (Petitioner) allegedly: (1) committed asault (on a police officer), (2) resisted arrest, (3) committed disorderly conduct, and (4) was driving under the influence of alcohol (D.U.I.). Thompson (Petitioner) was released on his own recognizance.

In 78-M-2912, Thompson (Petitioner) is alleged to have committed criminal trespass on his (Petitioner's) property. e.g., Thompson's place of residence heretofore. Bond was levied at $2,000.00 — 10% cash.

On August 15, 1978, Judge Douglas Stephens ordered the criminal trespass charges (78-M-2912) to be set for trial on August 25, 1978. After the records were tampered with and improper conduct by Judge Condit and Judge Stephens, 78-M-1186 was tried instead of 78-M-2912. Thompson (Petitioner) was found guilty and appealed.

When Thompson first attempted to file a Notice of Appeal in 78-M-1186, Ms. Woltenberg would not accept the Notice of Appeal, claiming Judge Stephens told her, ". . . not to accept any Notice of Appeal from Thompson (Petitioner). Judge Stephens did not try 78-M-1186.

In the first illegal incarceration, on August 15, 1978, Ms. Woltenberg had Deputy Clerk Cindy Smith to sign an "Order of Commitment" with the full knowledge that her acts and deeds were illegal and wrongful. No Judge had signed any order.

On September 29, 1978, Ms. Woltenberg signed the second "Order of Commitment" illegally and wrongfully confining Petitioner to jail. Again, no Judge signed an order committing Thompson to jail.

Ms. Woltenberg claims she can sign "Order of Commitment" and/or designate other deputy clerks to sign "Order of Commitment".

Thompson (Petitioner) sought to appeal these illegal jailings and also sought writs of habeas corpus to the Kenton Circuit Court. However, since no Judge had signed any order confining Thompson to jail, these efforts by Thompson were futile.

Cases 78-M-1186 and 78-M-2912 were timely appealed to the Kenton Circuit Court and dismissed by that court. The cases were not remanded to the Kenton District Court.

In the U. S. District Court, Ms. Woltenberg was granted Summary Judgment on the bases of judicial immunity, Appendix Pages 5a-7a, without hearing or notice. The Court of Appeals affirmed. Appendix Pages 2a-3a.

Thompson (Petitioner) believes the ruling of the federal courts below are directly in conflict with rulings of this Court on the issue presented herein. *Dennis* v. *Sparks, supra* (1980), *Bradley* v. *Fisher, supra* (1872), and *Hill* v. *United States ex rel. Wampler, supra.*

REASONS FOR GRANTING THE WRIT

The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of that right requires a reversal. *Hovey* v. *Elliot,* 42 LEd 215.

The party opposing a summary judgment motion has a right to a full evidentiary hearing on genuine issues of material fact. *U.S.* v. *J. F. Williams Co.,* 498 F 2d 414, 2nd Cir. (1974).

Granting of defendant's motion for summary judgment without either notice or hearing (could) improperly cut off plaintiff's opportunity to develop a record on which the court could fairly rule on the merits of his complaint. *Kilbort* v. *Hampton,* 538 F 2d 90 5th Cir.

However, in the case at bar, it is conceded that Thompson (Petitioner) was denied his liberty. App. pp. 8a-10a. Relief was denied on the assumption that Ms. Woltenberg is clothed with judicial immunity. App. pp. 5a-7a. "In the

trial of a conspirator, there is no technical rule that others must be concurrently or precedently convicted, nor will personal defenses of other conspirators, not amounting to a total incapicity to commit crime, be a defense to him." *Farnsworth* v. *Zerbst,* 98 F 2d 541, 544, 5th Cir.

Functionary such as clerks are not clothed in judicial immunity because their duties are ministerial and not discretionary in nature. *McLallen* v. *Henderson,* 492 F 2d 1298.

Findings of immunity have thus been predicated upon a considered inquiry into the immunity historically accorded the relevant official at common law and the interest behind it. *Bradley* v. *Fisher,* 80 U.S. (13 WALL) 335, 20 LEd 646 (1872), *Imbler* v. *Pachtman,* 424 U.S. 409, 421, 47 LEd 2d 128, 96 LEd 2d 984 (1967), *Procunier* v. *Navarette,* 434 U.S. 555, 562, 55 LEd 2d 24, 98 SCt 855, *Stump* v. *Sparkman,* 435 U.S. 349 (1978), *Wood* v. *Strickland,* 420 U.S.C. 308, 318, 43 LEd 2d 214, 95 SCt 992 (1975).

From our inquiry it has been concluded that the absolute immunity that Judges (and Prosecutors) enjoy exists for the benefit of the judicial system and of the public, not for that of the Judge (or court functionary such as clerks).

The rule of judicial immunity from damages, with its single, brightline exception is as broad as, but not broader than, is necessary. Even so, the rule is a harsh one, laden with potential for unredressed wrong. As such, the scope of judicial immunity should not be extended beyond that necessary to preserve the Judge's independence of mind and judgment. For it is upon the necessity to protect these, and on that alone, that rule rests. *Sparks* v. *Duval County Ranch Co., Inc.,* 604 F 2d 978 (1979), Affirmed, *Dennis* v. *Sparks,* 101 SCt 183 (1980).

In order to state a cause of action under 42 U.S.C. 1983, the Plaintiff must allege only that some person has deprived him of a federally protected right and that such person acted under color of state law. *Monroe* v. *Pape,* 367 U.S. 167, 171, 5 LEd 2d 492, 81 SCt 473 (1961).

Thus, the applicable test for determining establishment of the qualified immunity defense to damage liability under 42 U.S.C. 1983 that is available to executive officers for acts performed in the course of official conduct focuses not only on whether the official himself was acting sincerely, believed that his conduct was lawful, but also on whether the official himself was acting sincerely and with a belief that he was doing right. *Gomez* v. *Toledo,* 446 U.S. 635, 64 LEd 2d 572, 100 SCt 1920.

Ms. Woltenberg acknowledged she signed and/or had signed the "Order of Commitment" pursuant to *R.Cr. 3.18.* (R.Cr. 3.18 was amended September 1, 1981, to permit illegal acts such as are complained of herein.) Of course, Ms. Woltenberg claims Judge Stephens told her to sign the "Writ of Commitment" even though he (Judge Stephens) signed no order.

It is well settled that, "A sentence (or fine) in a criminal case should be clear, definite and so complete as to need no construction by court and obviate the necessity of non judicial or ministerial officer supplementing its written words to ascertain its meaning . . . The validity of commitment for service of sentence (or fine) imposed on conviction of crime depends on judgment behind it, and if judgment and sentence do not authorize convicts detention (or fine), no mittimus (order of commitment) will avail to make such detention (or fine) lawful. *United States ex rel. Chasteen* v. *Denemark,* 138 F 2d 289, *Hill* v. *U.S. Ex rel. Wrampler,* 298 U.S. 460, 56 SCt 760, 80 LEd 1283.

By virtue of Ms. Woltenberg's position, as chief deputy, she was aware that she had only a qualified immunity. Ms. Woltenberg was also aware of R.Cr. 3.18 and the fact that no judge had signed any order confining Thompson (Petitioner) to jail.

The clerk can only certify to the order of the court and the Bailiff of the court can only execute the sentence of the court as recorded. *People* v. *Graydon,* 329 Ill. 398, 401, 160 N.E. 748.

NOTE: Although the Appeals were dismissed by the Kenton Circuit Court and not remanded to the Kenton District Court, Ms. Woltenberg and/or her designee had a criminal summons issued for Petitioner (Thompson) to appear before Judge Stephens.

Each time Thompson (Petitioner) had an important appearance in federal court, a criminal summons would be issued for Thompson to appear before Judge Stephens. Judge Stephens would not sign any order, but the Court Clerk would sign an "Order of Commitment" confiing Thompson to jail. Thus, Thompson (Petitioner) could not appeal because no *Judge* had signed any order. The Kenton Circuit Court would hold off on hearing the writ of habeas corpus until Thompson was released.

These summons threatened to incarcerate Petitioner (Thompson) if he did not pay fines he (Petitioner) did not owe in cases 78-M-1186 and 78-M-2912.

At the time these illegal and wrongful acts were committed, only magistrates had the authority to sign an "Order of Commitment", Criminal Rule R. Cr. 3.18. The rule was amended September 1, 1981, and now permits clerks to sign "Order of Commitment" in violation of the United States Constitution 5th and 14th Amendments.

Amendment of R. Cr. 3.18 itself is verification that the jurisdiction afforded Deputy Clerk Ms. Woltenberg was inappropriate at the time she wilfully deprived Thompson (Petitioner) of his liberty and property; and was *hence forth* unlawful in the absence of an order signed by a judge.

Truly, the pen is mightier than the sword, or at least more dignified. But where it, in effect, desecrates Constitutional rights, we believe it a smidgen strong.

CONCLUSION

Ms. Woltenberg wilfully took the action herein complained of with the sole intent of depriving Thompson (Petitioner) of liberties and property. Thus, the Orders and Judgment below should be reversed, with Judgment entered for Thompson (Petitioner).

. . . . . .

EDDIE THOMPSON, JR., Pro Se

Appendix

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 80-3411

EDDIE THOMPSON, JR.,
Plaintiff-Appellant,

vs.

MARY ANN WOLTENBERG,
Defendant-Appellee.

ORDER

(Filed November 19, 1981)

Before: ENGEL, MERRITT and KENNEDY, Circuit Judges.

The Court not having favored rehearing en banc in this case, the petition for rehearing is referred to our panel for disposition.

Upon consideration, IT IS ORDERED that the petition for rehearing be and hereby is DENIED.

ENTERED BY ORDER OF THE COURT
JOHN P. HEHMAN, CLERK

/s/ LEONARD GREEN
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

NO. 80-3411

EDDIE THOMPSON, JR.,
Plaintiff-Appellant,

vs.

MARY ANN WOLTENBERG,
Defendant-Appellee.

ORDER

(Filed September 14, 1981)

BEFORE: ENGLE, MERRITT and KENNEDY, Circuit Judges

This appeal has been referred to a panel of the Court pursuant to Rule 9 (a), Rules of the Sixth Circuit. After examination of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34 (a), Federal Rules of Appellate Procedure.

Appellant filed his pro se complaint in the district court pursuant to 42 U.S.C. § 1983. The complaint alleges that appellee, Chief Deputy Clerk for the Kenton District Court, conspired with a judge of the Kenton District Court to illegally incarcerate appellant because of his race. The district court granted appellee's motion for summary judgment, and appellant filed his appeal with this Court.

Appellant has alleged a conspiracy between appellee and a judge. It is well established that a judge acting in his

official capacity is immune from suit under 42 U.S.C. § 1983. *Dennis* v. *Sparks,* — U.S. —, 101 S.Ct. 183, 186 (1980); *Procunier* v. *Navarette,* 434 U.S. 555, 561 (1977); *Pierson* v. *Ray,* 386 U.S. 547, 553-54 (1967); *Stump* v. *Sparkman,* 435 U.S. 349 (1978). Additionally, it is well established that an individual performing a ministerial duty at the direction of a judge citing in an official capacity is immune from suit. In this case appellee was merely performing the duties of a clerk of court in the usual manner, and under the direction of a judge. Thus, appellee is immune from suit under 42 U.S.C. § 1983. *Smith* v. *Martin,* 542 F.2d 688, 691 (6th Cir. 1976); *Denman* v. *Leedy,* 479 F.2d 1097, 1098 (6th Cir. 1973); *Waits* v. *McGowan,* 516 F.2d 203, 206 (3rd Cir. 1975).

Since the issues upon which a determination of this cause depends appear so unsubstantial as not to need further argument, it is ORDERED that the district court judgment of April 8, 1980, and order of May 2, 1980, be, and hereby are, affirmed. Rule 9 (d) 2, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-95

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

MARY ANN WOLTENBERG,
DEFENDANT.

ORDER

(Filed May 2, 1980)

This matter is before the court on the motion of the plaintiff for reconsideration of and the setting aside of the court's order entering summary judgment for the defendant, Mary Ann Woltenberg, and also on the plaintiff's motion for leave to add a defendant and file an amended complaint.

The court having considered these motions, and being of the opinion that no new considerations are offered with regard to the potential liability of the original defendant, and that it would be inappropriate to add the suggested additional defendant to this case, which has now been concluded, and being advised,

IT IS ORDERED that all of said motions be, and they are, hereby DENIED.

This 2nd day of May, 1980.

/s/ WILLIAM C. BERTELSMAN
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-95

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

MARY ANN WOLTENBERG,
DEFENDANT.

MEMORANDUM OPINION AND ORDER

(Filed April 8, 1980)

This matter is before the court on the motion of the defendant, Mary Ann Woltenberg, for a summary judgment on the basis of judicial immunity. Also pending is a motion by the plaintiff to add as an additional defendant one Cindy Smith, who is apparently a deputy circuit court clerk of Kenton County, serving with the Defendant Woltenberg.

The court has carefully examined the record, including the affidavits filed by the parties for and against the motion for summary judgment. The affidavit of the Defendant Woltenberg clearly states that she took no acts with regard to the plaintiff other than in the ordinary course of her duties as chief deputy of the Kenton Circuit Court, and then only at the direction of the judges. Far from rebutting these averments in defendant's affidavit, the affidavit of the plaintiff only serves to bear them out.

A court official, such as a clerk or deputy clerk, who acts at the direction of a judge, shares the judicial immunity of the judge. *Denman* v. *Leedy*, 479 F. 2d 1097 (6th Cir. 1973); Antieau, *Federal Civil Rights Acts, Civil Practice* § *40*.

For the above reasons,

IT IS ORDERED as follows:

1. That the motion of the defendant, Mary Ann Waltenberg, for summary judgment be, and it is, hereby SUSTAINED, and a separate judgment dismissing the complaint is this day entered.

2. That the motion of the plaintiff to add Cindy Smith as an additional defendant be, and it is, hereby DENIED.

This 8th day of April, 1980.

/s/ WILLIAM C. BERTELSMAN
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-95

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

MARY ANN WOLTENBERG,
DEFENDANT.

JUDGMENT

(Filed April 8, 1980)

For the reasons stated in the memorandum and order filed concurrently herewith,

IT IS ORDERED AND ADJUDGED that the complaint hereby be, and it is, hereby DISMISSED, with prejudice, at the cost of the plaintiff.

This 8th day of April, 1980.

/s/ WILLIAM C. BERTELSMAN
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-95

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

MARY ANN WOLTENBERG,
DEFENDANT.

MEMORANDUM

(Filed December 21, 1978)

This action is presently before the Court on defendant Woltenberg's motion to dismiss for lack of jurisdiction over the subject matter, or, alternatively, for failure to state a claim upon which relief may be granted. For the reasons explained *infra,* the Court will overrule the motion to dismiss.

Insofar as jurisdiction over the subject matter of the suit is concerned, the complaint states that "[J]urisdiction of this Court is found under 42 USC 1983." While it is the law that jurisdiction over claims filed under 42 U.S.C. § 1983 is vested in the federal district courts by 28 U.S.C. § 1343 and not by § 1983 itself, it is also the law that *pro se* complaints alleging deprivation of civil rights must be construed liberally. *Haines* v. *Kerner,* 404 U.S. 519 (1972);

Williams v. *Vincent*, 508 F.2d 541 (2d Cir. 1974); *Cruz* v. *Cardwell*, 486 F.2d 550 (8th Cir. 1973). Therefore, although plaintiff Thompson failed to allege jurisdiction in a technically correct manner, this Court finds that the allegations of the complaint do fairly confer jurisdiction on this Court.

As to the motion to dismiss for failure to state a claim, the complaint alleges, *inter alia*, that defendant Woltenberg conspired to deprive plaintiff Thompson of his liberty. In addition, plaintiff filed an affidavit with exhibits tending to support the allegations of his complaint. The Court finds that on the allegations of the complaint which must be accepted as true, *Cooper* v. *Pate*, 378 U.S. 546 (1964), it would be premature to dismiss the complaint for failure to state a claim. This is especially true in view of the rule discussed above that complaints such as these be construed liberally. *Haines, supra; Williams, supra; Cruz, supra.*

This 21 day of December, 1978.

/s/ EUGENE E. SILER, JR.,
JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL ACTION NO. 78-95

EDDIE THOMPSON, JR.,
PLAINTIFF,

vs.

MARY ANN WOLTENBERG,
DEFENDANT.

ORDER

(Filed December 21, 1978)

In accordance with the Memorandum of even date, it is hereby

ORDERED that defendant Woltenberg's motion to dismiss be and is overruled.

This 21 day of December, 1978.

/s/ EUGENE E. SILER, JR.,
JUDGE

Opposition

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CLERK

No. 81-1525

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

EDDIE THOMPSON, JR. - - Plaintiff-Petitioner

versus

MARY ANN WOLTENBERG - Defendant-Respondent

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether or Not This Court Should Grant Certiorari of a Sixth Circuit Court of Appeals' Decision When That Decision Applies the Doctrine of Judicial Immunity to an Act by a Court Clerk of a Kentucky State Court When Such Immunity Presents No Substantial Federal Question and When There Is No Diversity on the Immunity by the Various Circuit Courts of Appeals.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 81-1525

EDDIE THOMPSON, JR. - - *Plaintiff-Petitioner*

v.

MARY ANN WOLTENBERG - *Defendant-Respondent*

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The only party [parties] to this proceeding whose judgment is sought to be reviewed is Mary Ann Woltenberg, Chief Deputy Clerk for the Kenton District Court, in whose favor the United States Court of Appeals for the Sixth Circuit rendered its judgments, i.e., ORDER[S] filed November 19, 1981 and September 14, 1981. See pages 1a-3a of Mr. Thompson's Appendix. Since no other party to this proceeding has a favorable judgment, it is only Ms. Woltenberg's which Thompson petitions this Court to review.

CITATIONS TO OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

1. December 21, 1978, ORDER with MEMORANDUM by the UNITED STATES COURT, EASTERN DISTRICT OF KENTUCKY, COVINGTON, HON. EUGENE E. SILER, JR., J., overruling Mary Ann Woltenberg's motion to dismiss. Citation unknown; please see Mr. Thompson's Appendix at 8a-9a.

2. April 8, 1980, JUDGMENT with MEMORANDUM OPINION AND ORDER by the UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY, COVINGTON, HON. WILLIAM O. BERTELSMAN, J., presiding sustaining Mary Ann Woltenberg's motion for summary judgment. Citation unknown; please see Mr. Thompson's Appendix, at 5a-7a.

3. May 2, 1980, ORDER by the UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY, COVINGTON, HON. WILLIAM O. BERTELSMAN, J., presiding, denying Mr. Thompson's motion for reconsideration, on amended complaint. Citation unknown; please see Mr. Thompson's Appendix, at 4a.

4. September 14, 1981, ORDER by the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, BEFORE: ENGLE, MERRITT and KENNEDY, Circuit Judges, affirming the April 8, 1980 judgment and May 2, 1980 order of the district court. Citation unknown; please see Mr. Thompson's Appendix at 2a-3a.

5. November 19, 1981 ORDER by the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, BEFORE: ENGEL, MERRITT and KENNEDY, Circuit Judges, denying Mr. Thompson's petition for rehearing en banc. Citation unknown; please see Mr. Thompson's Appendix at 1a.

STATEMENT OF JURISDICTIONAL GROUNDS AND TIME FACTORS

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

The time factor on which this invocation rests is set out in 28 U.S.C. § 2101(c).

STATUTE WHICH THE CASE INVOLVES

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

STATEMENT OF THE CASE

For purposes of clarification, the respondent would call to the Court's attention that this case arises out of two separate proceedings in the Kenton County, (Covington, northern Kentucky, close to Cincinnati, Ohio), Kentucky District Court. One case, which was case number 78-M-1186, involved charges against Mr.

Thompson for driving while intoxicated and resisting arrest, and at the conclusion of a jury trial on September 1, 1978, Hon. William L. Schmaedecke, J., presiding, the jury found Mr. Thompson guilty on both counts and assessed fines of One Hundred Dollars ($100.00) and Two Hundred Dollars ($200.00) relatively speaking.

The other case, which was case number 78-M-2912, involved a charge against Mr. Thompson of first degree criminal trespass as denounced under KRS 511.060. On the day of trial in the District Court, Hon. Douglas M. Stephens, J., presiding, instead of a trial, because of his disruptive behavior, Mr. Thompson was committed to the Kenton County Jail in lieu of posting a Five Thousand Dollar ($5,000.00) cash bond. (It is also possible that this case was the subject of another petition for certiorari by Mr. Thompson. The Supreme Court of the United States, No. 80-6341, *Eddie Thompson, Jr.*, v. *Kentucky*).

Respondent would also point out initially and for further clarification that Mary Ann Woltenberg, insofar as both of the cases in the Kenton County, Kentucky, District Court, was acting in her capacity as Chief Deputy Clerk for the Kenton District Court. In fact, in the United States District Court, Eastern District of Kentucky at Covington, Mary Ann Woltenberg filed an AFFIDAVIT swearing to her actions and that those actions were only in her official capacity. In the interest of accessibility (and since so far as respondent's counsel knows there is no joint appendix and the only record was of pleadings and affidavits amassed in

the United States District Court, Eastern District of Kentucky at Covington, these pleadings and affidavits constituting the record on appeal to the United States Court of Appeals for the Sixth Circuit, see Supreme Court Rule 34.1 (g)) that respondent is attaching Mary Ann Woltenberg's AFFIDAVIT as an attachment for respondent.

With the preceding preliminary comments, respondent will now enlarge somewhat on the statement of the case.

Prior to September 29, 1978, Eddie Thompson, Jr., was arrested on a charge of Criminal Trespass in the first degree as denounced under KRS 511.060. The style of this case is *Commonwealth of Kentucky* v. *Eddie Thompson, Jr.,* Case No. 78-M-2912. Trial of this case was set for September 29, 1978.

On the day of trial, Mr. Thompson so disrupted the proceedings that Judge Stephens was compelled to declare a mistrial. At that time the original bond of Two Thousand Dollars ($2,000.00), as set by Judge Condit, was increased to Five Thousand Dollars ($5,000.00). As an additional requirement, Judge Stephens ordered that the bond be paid in full. When the order was entered, Mr. Thompson was present and fully aware of the change in the bond. Upon Thompson's failure or inability to post the Five Thousand Dollars ($5,000.00), Judge Stephens ordered that Thompson be incarcerated. Pursuant to Judge Stephens' verbal and written order, Ms. Woltenberg executed, on September 29, 1978, the jail commitment order. It should be noted that the Order of Commit-

ment is merely a memorandum reflecting the district judge's decision to commit an individual to jail. Ms. Woltenberg's duty in this regard was simply to document the district judge's order. In all respects Ms. Woltenberg was simply following the established procedures of the Court. Appendix pp. 33-36.

Mr. Thompson also complains that Mary Ann Woltenberg unlawfully failed to file Mr. Thompson's appeal. This complaint arises from a different and unrelated criminal action. The case of *Commonwealth of Kentucky* v. *Eddie Thompson, Jr.*, Case No. 78-M-1186, involved two charges brought by the Covington police. Mr. Thompson was charged with driving while intoxicated and resisting arrest. A jury trial on these charges was held on September 1, 1978. The presiding judge was William L. Schmaedecke. At the conclusion of the trial, the jury returned a verdict of guilty on both counts. The jury also assessed a fine of One Hundred Dollars ($100.00) on the charge of driving while intoxicated, and assessed a fine of Two Hundred Dollars ($200.00) for resisting arrest. Appendix, p. 36.

Mr. Thompson then attempted to perfect his appeal from the fines. In filing his appeal he was informed by Mary Ann Woltenberg that the appeal would not be filed unless he posted as a supersedeas bond the amount of the fine and court costs. In so acting, Mary Ann Woltenberg was complying with RCr 12.76(3) of the Kentucky Rules of Criminal Procedure. Mr. Thompson inquired of Judge Stephens as to the validity of this position. Judge Stephens confirmed that before the appeal could be filed, he must file a supersedeas

bond unless Judge Schmaedecke entered an order staying the enforcement of the fine. Later that day, Judge Schmaedecke, pursuant to RCr 12.76(3), stayed the payment of fines. On September 29, 1978, Mr. Thompson filed his appeal without payment of bond. Appendix, p. 36.

Because Mr. Thompson believed that Mary Ann Woltenberg and other parties were conspiring against him, he then filed a complaint requesting Twenty Thousand Dollars ($20,000.00) declaratory damages, Ten Thousand Dollars ($10,000.00) punitive damages, and an order enjoining the defendant from "illegally harrassing" the appellant.

The United States District Court, Eastern District of Kentucky, at Covington, the Honorable William O. Bertelsman presiding, dismissed Mr. Thompson's claim of action in which he alleged that Mary Ann Woltenberg and Douglas M. Stephens conspired to deprive Mr. Thompson of his civil rights. Accompanying the judgment was a Memorandum Opinion and Order which sustained the defendant's motion for summary judgment. In the course of its Opinion and Order, see pages 5a-6a of Mr. Thompson's Appendix, the United States District Court said:

> The court has carefully examined the record, including the affidavits filed by the parties for and against the motion for summary judgment. The affidavit of the Defendant Woltenberg clearly states that she took no acts with regard to the plaintiff other than in the ordinary course of her duties as chief deputy of the Kenton Circuit

Court, and then only at the direction of one of the judges. Far from rebutting these averments in defendant's affidavit, the affidavit of the plaintiff only serves to bear them out.

A court official such as a clerk or deputy clerk, who acts at the direction of a judge, shares the judicial immunity of the judge. *Denman* v. *Leedy*, 479 F. 2d 1097 (6th Cir. 1973); Antieau, *Federal Civil Rights Acts, Civil Practice* §40.

Subsequent to this Order, Eddie Thompson, Jr., filed a motion for reconsideration and motion for leave to amend his complaint by adding a new defendant. On May 2, 1980, the District Court overruled Mr. Thompson's motions.

By an ORDER (filed September 14, 1981) the United States Court of Appeals for the Sixth Circuit, affirmed the April 8, 1980 judgment and May 2, 1980 order of the United States District Court. See pages 1a-3a of Mr. Thompson's Appendix.

SUMMARY OF ARGUMENT

I.

Since Mr. Thompson's Complaint Was Conclusory in Nature, the District Court Was Procedurally Correct in Granting the Defendant's Motion for Summary Judgment, and the Sixth Circuit Court of Appeals Was Correct in Affirming the District Court's Action in This Respect.

II.

On the Merits, Mary Ann Woltenberg Was/Is Clothed With Judicial Immunity and the District Court and Sixth Circuit Court of Appeals Properly Recognized This Immunity.

ARGUMENTS

I.

In his petition before this Court, Mr. Thompson complains of the dismissal of his suit on summary judgment. The defendant, Mary Ann Woltenberg, moved for such dismissal pursuant to Rule 56 of the Federal Rules of Civil Procedure.

It was the position of Mary Ann Woltenberg in the District Court that Mr. Thompson's complaint failed to set forth sufficient facts establishing a claim upon which relief could be granted. The defendant/respondent repeats that position here.

The defendant/respondent submits that there is no disagreement as to the material facts established by the affidavits of both parties. The controlling issue of law in dispute, however, is whether Mary Ann Woltenberg and Judge Stephens conspired under color of law to deprive Mr. Thompson of his constitutional rights.

A thorough scrutiny of Mr. Thompson's complaint and supporting document reveals only the statement than an action took place and the action was the result of a conspiracy. The complaint did not establish any facts demonstrating that Judge Stephens and Mary Ann Woltenberg entered into a conspiracy or how the conspiracy was established. In short, Mr. Thompson wanted the Court to entertain the contention that incarceration for failure to post bond raises the presumption that the Court officials were engaging in a con-

spiracy. Such a contention did not warrant serious consideration.

It is well established that broad and conclusionary allegations, unsupported by facts, are insufficient to support a cause of action under 42 U.S.C. 1983. Cf. *Fletcher* v. *Hook,* 446 F. 2d 14 (3rd Cir. 1971). See also *O'Brien* v. *DiGrazia,* 544 F. 2d 543 at Fn. 3 (1st Cir. 1976). In *Slotnick* v. *Straviskey,* 560 F. 2d 31 (1st Cir. 1977), U. S. cert den 434 U. S. 1077 the appellant argued that the district court erred in dismissing his civil rights complaint. In his complaint, the appellant alleged that a credit union which instituted suit for collection of an unpaid loan and the officials of a state court, including the judge and the clerk, conspired to deprive him of his constitutional rights. In particular, the appellant said that his incarceration pursuant to a contempt order was motivated by an illegal conspiracy. The complaint also claimed that the constable, at the direction of the credit union, forged illegal documents and served them on the appellant. After an inquiry, the district court dismissed the complaint on motion for summary judgment for reasons that the court officials were immune from an action for damages and for failure of the appellant to state a claim for which relief could be given.

Although the First Circuit Court of Appeals was principally concerned with the doctrine of judicial immunity, a subject we will discuss in the second argument, it also commented on the sufficiency of the complaint by saying:

> It has long been the law in this and other circuits that complaints cannot survive a motion to dismiss if they contain conclusory allegations of conspiracy but do not support their claims with references to material facts. [Citations omitted.] This rule might have been applied with profit to this case. The complaint contains frequent references to conspiracy, but it offers few insights into the specific nature of the alleged concerted action. The only specific allegation regarding a conspiracy is the statement that the constable forged illegal documents and served them on the plaintiff at the request of the credit union's lawyer and with the knowledge of the court's clerk. Despite language hinting at a wider conspiracy, the plaintiff has failed to plead facts supporting these vague claims, and the courts need not conjure up unpleaded facts to support these conclusory suggestions. *O'Brien* v. *Digrazia,* 544 F. 2d 543, 546 n. 3 (1st Cir. 1976). *Slotnick* v. *Staviskey, supra,* at 33.

Accord, *Powell* v. *Workmen's Comp. Bd. of New York,* 327 F. 2d 131 (2nd Cir. 1964); *Kadar Corp.* v. *Milbury,* 549 F. 2d 230 (1st Cir. 1977).

The Seventh Circuit Court of Appeals decision of *Dieu* v. *Norton,* 411 F. 2d 761 (1969), is similar to Mr. Thompson's case. In that case the appellate court was considering the appellant's contention that the district court erred in dismissing the complaint for failure to state a claim for which relief can be granted. In summarizing the details of the complaint, the Court said (at page 763):

> As best as we can understand, the theory of plaintiff's *pro se* complaint is that her alleged present injury arises from the action of the state circuit judge in directing a verdict for defendant at the conclusion of all the evidence. She charges her attorney with engaging in some sort of a conspiracy by participating in a conference in the judge's chambers on the motion for a directed verdict, and by refusing to appeal the case, even though she agreed to pay for an appeal. She charges Kresge's attorney with obstructing justice in moving for and securing a directed verdict. She charges the circuit judge with misconduct in sustaining the motion for a directed verdict, denying a "rehearing" and presumably of conspiring with lawyers in his chambers. She charges the court reporter with depriving her of a transcript of the trial and the clerk with denying her a transcript of the record. . . .

The Seventh Circuit Court of Appeals affirmed the dismissal of the complaint. In affirming, Senior Circuit Judge Hastings said:

> Assuming, arguendo, that plaintiff is attempting to allege an actionable conspiracy within the reach of § 1983, *supra,* the complaint must fall. At best, the complaint does nothing more "than merely state vague and conclusionary allegations respecting the existence of a conspiracy" without showing any "overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy." . . . *Dieu* v. *Norton, supra* at 763.

Accord, *Taylor* v. *Nichols,* 558 F. 2d 561 (10th Cir. 1977); *Jackson* v. *Cox,* 540 F. 2d 209 (5th Cir. 1976).

From this survey of cases, it is clear that Mr. Thompson should have alleged something more than a claim that an action of the court clerk caused him harm and the action was pursuant to a conspiracy motivated by racial bias. *Jackson* v. *Cox, supra.*

In conclusion, the defendant/respondent submits that the facts of this case resemble the facts set forth in *Slotnick* v. *Staviskey, supra,* and *Dieu* v. *Norton, supra.* In both cases the complaint was dismissed for failure to state a claim for which relief can be granted.

The complaint as it stood was frivolous. The allegations of conspiracy were vague and conclusionary. The defendant was entitled as a matter of law to a summary judgment.

II.

It was undisputed that the defendant, Mary Ann Woltenberg, was performing her duties as Chief Deputy Clerk of the Kenton District Court and was acting pursuant to the instruction of Judge Douglas M. Stephens. In view of her position and official capacity, the defendant/respondent submits that the doctrine of judicial immunity barred a recovery for damages under 42 U.S.C. 1983.

The United States Supreme Court and the various federal Circuit Courts of Appeals have repeatedly declared that the enactment of 42 U.S.C. 1983 did not operate to abolish the common law doctrine of judicial

immunity. *Stump* v. *Sparkman,* 435 U. S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978), U. S. reh den 436 U. S. 951; *Apton* v. *Wilson,* 506 F. 2d 83 (D.C. Cir. 1974); *Saier* v. *State Bar of Michigan,* 293 F. 2d 756 (6th Cir. 1961); *Carpenter* v. *Dethmers,* 253 F. 2d 131 (6th Cir. 1958).

Although this doctrine originally applied to the actions of state and federal court judges, the doctrine has been applied to court officials or other persons operating at the direction of the Court or acting in a judicial capacity. *Denman* v. *Leedy,* 479 F. 2d 1097 (6th Cir. 1973); *Waits* v. *McGowan,* 516 F. 2d 203 (3rd Cir. 1975); *Smith* v. *Martin,* 542 F. 2d 688 (6th Cir. 1976).

It is quite clear from the existing case law that clerks of a Court fall within the protective umbrella of judicial immunity. Several of the Circuit Courts of Appeals have declared that if it is shown that the clerk was acting at the direction of the judge, the clerk's immunity is as absolute as that of the judge. *Stewart* v. *Minnick,* 409 F. 2d 826 (9th Cir. 1969); *Dieu* v. *Norton,* 411 F. 2d 761 (7th Cir. 1969); *Zimmerman* v. *Spears,* 428 F. Supp. 759 (W.D. Tex. 1977), *aff.* 565 F. 2d 310 (5th Cir. 1978); *Davis* v. *McAteer,* 431 F. 2d 81 (8th Cir. 1970). See also 14 C.J.S. § 140, at p. 228, and Antieau Federal Civil Rights Acts, § 40, at pp. 68-72.

This rule according immunity to clerks of courts has been upheld in the Sixth Circuit Court of Appeals. In *Denman* v. *Leedy,* 479 F. 2d 1097 (6th Cir. 1973), the appellant instituted a civil rights suit against a

number of state and court officials. Among the court officials named was the Clerk for the Municipal Court of Wooster, Ohio. The complaint alleged *inter alia* that the clerk improperly failed to fix bail. In affirming the dismissal of the complaint the Sixth Circuit Court of Appeals held (at page 1098):

> As the plaintiffs' charge relates to an act performed by the Clerk within the scope of his official quasi-judicial duties, this defendant is entitled to immunity.

Accord, *Gabbard* v. *Rose,* 359 F. 2d 182 (6th Cir. 1966).

The case of *Sullivan* v. *Kelleher,* 405 F. 2d 486 (1st Cir. 1968), also merits discussion. In *Sullivan* the First Circuit was concerned with the issue of judicial immunity in a case where the plaintiff in a civil rights suit alleged that he had been evicted without proper notice. The Court, in upholding the doctrine of immunity as it applied to clerks of Courts, said (at page 487):

> Since the plaintiff concedes that the Newburyport District Court had general jurisdiction over the subject matter of the action brought in that court to evict him from his home, and since the immunity accorded to judges "extends to other officers of government whose duties are related to the judicial process," Barr v. Matteo, 360 U. S. 564, 569, 79 S. Ct. 1335, 1338, 3 L. Ed. 2d 1434 (1959), it follows that the defendant cannot be held personally liable for any defects in service of process, if indeed there were such defects. The inclusion of opprobrious epithets, such as alleging that the

> judicial officer acted maliciously or corruptly, adds nothing of legal consequence to the complaint.

Accord, *Slotnick* v. *Staviskey,* 560 F. 2d 31 (1st Cir. 1977), U. S. cert den 434 U. S. 1077; *Grubbs* v. *Slater,* 144 F. Supp. 554 (W.D. Ky. 1955).

Although this principal is well established, it should be noted that an emerging line of cases have imposed certain limitations upon a clerk's immunity. See *McCray* v. *Maryland,* 456 F. 2d 1 (4th Cir. 1972) and *McLallen* v. *Henderson,* 492 F. 2d 1298 (8th Cir. 1974). The defendant/respondent submits that these cases are not applicable to the facts of this case. In this developing line of cases, the complaint alleged that the clerk failed to comply with a statute or disobeyed an order of the judge. The situation in this case is the opposite of the one in *McCray* v. *Maryland, supra.* The defendant was acting pursuant to specific orders of the district court judge. Thus, the defendant is entitled to immunity. If it were otherwise, the clerk would be confronted with the problem of determining whether the judge's orders were proper. Cf. *Sullivan* v. *Kelleher, supra.*[1] This situation would, of course, be untenable for a clerk of a court.

As an aside and concerning the initial problems Mr. Thompson encountered in appealing his fines, the defendant/respondent would point out that this Court has certain rules pertaining to security in stays. See 28 U.S.C. § 2101(f).

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[1]The Sixth Circuit Court of Appeals recognized this emerging trend of cases in *Smith* v. *Martin, supra,* but did not address it. *See: Smith* v. *Martin, supra,* at 690-691.

CONCLUSION

In the course of this response, the defendant/respondent has shown with some persuasion that a clerk is vested with judicial immunity when performing the duties of the position. Since the Civil Rights Act did not abolish this immunity, the plaintiff as a matter of law cannot recover damages. The defendant's motion for summary judgment was properly granted, and this Court should deny certiorari.

It is so moved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 28.3, I certify that on Wednesday, May 5, 1982, three copies of this RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS were served on Mr. Eddie Thompson, Jr., by depositing three copies in the United States Mail, postage prepaid, and addressed to Mr. Thompson at 736 Highland Avenue, P. O. Box 1221, Covington, Kentucky 41011.

K. Gail Leeco

K. GAIL LEECO

Assistant Attorney General

RESPONDENT'S ATTACHMENTS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY
AT COVINGTON

No. 78-95

EDDIE J. THOMPSON, JR. - - - - *Plaintiff*

v.

MARY ANN WOLTENBERG - - - - *Defendant*

AFFIDAVIT

The Affiant, Mary Ann Woltenberg, for her Affidavit herein states as follows:

1. The Affiant is the Chief Deputy Clerk for the Kenton District Court, Sixteenth Judicial District, Commonwealth of Kentucky; Affiant's immediate superior is Mr. Ed F. Schroeder, Clerk, Kenton Circuit/District Court, Commonwealth of Kentucky.

2. Affiant has never conspired with Judge Douglas M. Stephens or any other person to take any action against Mr. Eddie J. Thompson, Jr., nor has Affiant in any other manner attempted to deprive Mr. Thompson of any rights that he may possess. Also, the fact that Mr. Thompson is a Negro has never had any bearing or significance in regard to the actions and conduct of Affiant.

3. Affiant executed an "Order of Commitment" on September 29, 1978 evidencing the order of confinement of Mr. Thompson in the Kenton County Jail in lieu of posting a cash bond in the amount of $5,000.00; this commitment order was entered in Case No. 78-M-2912, Commonwealth of Kentucky v. Eddie J. Thompson, Jr., charging a viola-

tion of KRS 511.060 (Criminal Trespass in the First Degree); a copy of said order of commitment is attached hereto. The said order of commitment was entered pursuant to the verbal and written order of Judge Douglas M. Stephens in said case, said order entered September 29, 1978. A copy of said written order is attached hereto and made a part hereof. (As is the procedure in the District Courts of the Commonwealth of Kentucky, written orders are customarily entered by the Judge on the calendar sheet, as was the case in the instant matter.) Additionally, the contemporaneous taped transcript of the hearing in question has been preserved by the District Clerk's office and is on file to be reviewed and/or duplicated by interested parties. Mr. Thompson was scheduled for trial on the above referenced criminal charge for September 29, 1978, but that Mr. Thompson disrupted the proceedings such that Judge Stephens declared a mistrial because of Mr. Thompson's misconduct. Upon declaring a mistrial Judge Stephens set bond for Mr. Thompson in the amount of $5,000.00 cash. Judge Stephens also directed that Mr. Thompson be held in the Kenton County Jail in lieu of said bond, and it was upon that basis that Affiant executed the order of commitment in question.

4. The order styled "Order of Commitment" is no more than a memorandum or document forwarded to the Jailer of Kenton County reflecting the order of the District Judge committing an individual to Jail; said order is intended to do no more than document the previously entered order of the District Judge. Neither the Affiant nor the other Clerks in the District Clerk's office have or assumed the responsibility or authority for ordering people committed to the Kenton County Jail, in these instances the Clerk does no more than document to the Jailer the previously entered order of the District Judge. Such was the case in the instant situation.

5. In response to the contention of Mr. Thompson, Affiant did not commit Mr. Thompson to the Kenton County Jail, but, rather, Mr. Thompson was committed by Judge Stephens and the Affiant merely followed the usual procedure as described above and as ordered by Judge Stephens. Mr. Thompson's allegation that Affiant knew that Judge Stephens had not signed an order committing Mr. Thompson to Jail is erroneous for the reason that not only had Judge Stephens signed such an order but the Affiant was aware of the execution of that order, as referred to above and as per the attached order.

6. Mr. Thompson was present in open court when Judge Stephens set Mr. Thompson's bond at $5,000.00 full cash and when Judge Stephens ordered him to Jail in lieu of that bond; Mr. Thompson is correct in stating that he had not been served with a copy of an order committing him to Jail, but the original of said order was on file in the Clerk's office and a copy of same was available to him upon request.

7. Mr. Thompson's allegation that he was "on bond for trespassing" in the sum of $2,000.00 is correct to a certain extent; Mr. Thompson's bond was originally set by Judge Condit in that amount, but, as mentioned above, Judge Stephens increased Mr. Thompson's bond to $5,000.00 which resulted in Mr. Thompson being incarcerated upon his failure or inability to post said bond. There was in fact a hearing conducted, as described above, on September 29, 1978 at which time Mr. Thompson was present throughout and participated fully and completely. It was at the conclusion of that proceeding, and because of Mr. Thompson's conduct, that Judge Stephens increased the bond of Mr. Thompson.

8. Affiant has no independent knowledge of the truth or falsity of the criminal allegations against Mr. Thompson in Case No. 78-M-2912. However, a complaint, proper and

valid on its face, has been filed against Mr. Thompson and a warrant has been issued by Judge Condit based thereon.

9. Mr. Thompson's references to Case No. 78-M-1186 involve two criminal charges brought against Mr. Thompson by the officers of the Covington Police Department, said charges being Driving While Under the Influence of Intoxicants and Resisting Arrest; Mr. Thompson's charges in that case were tried before a jury on the 1st day of September, 1978 before the Honorable Judge William L. Schmaedecke. Mr. Thompson was represented by Mr. Henry J. Curtis, 3200 First National Tower, Louisville, Kentucky 40202, a regular practicing attorney within the Commonwealth of Kentucky. At the conclusion of that case the jury found Mr. Thompson guilty of both offenses and assessed fines of $100.00 and $200.00 respectively. Thereafter, Mr. Thompson sought to appeal the jury verdict and judgment without having paid the fines and court costs. When Mr. Thompson spoke to affiant regarding the filing and perfecting of such an appeal, he was advised that the fines and costs must be deposited with the Clerk's office as bond upon appeal unless the fines were stayed by the trial judge. Affiant spoke to Judge Stephens regarding that procedure and whether she should follow that procedure in Mr. Thompson's case. Judge Stephens advised affiant that she should follow the usual procedure and require the posting of the fines as bond unless the trial judge, Judge Schmaedecke, permitted or ordered a stay of the fines. Later that same date, September 26, 1978, Judge Schmaedecke stayed the payment of the fines in question and Mr. Thompson processed his appeal without the posting of the fines as bond. At no time did Affiant or any other person

to Affiant's knowledge attempt to prevent or hinder Mr. Thompson's appeal from the jury verdict.

Further Affiant saith naught.

(s) Mary Ann Woltenberg

Commonwealth of Kentucky
County of Kenton

Subscribed and sworn to before me this the 8th day of January, 1979.

(s) ? ? ? ?

Notary Public
Comm. Expires: ? ? ? ?

Commonwealth of Kentucky
Court of Justice

CALENDAR

Date September 29, 19

Time 9:30 am

JURY TRIAL — COURT — JUDGE

Case No.	Style	Charges or Claim	Proceedings
78-M-2912	THOMPSON, EDDIE 736 Highland Avenue Covington, KY	Criminal Tresp. 1°	Mistrial declared by Def. misconduct; Def. Trial to be rescheduled in future Bond $5000.00 cash

Judge Signature [signature] Date 9-29-78

CLERK OF CIRCUIT COURT
(CRIMINAL)

County Kenton

KAC Ex 1

COMMONWEALTH OF KENTUCKY

PLAINTIFF

Eddie Thompson

DEFENDANT

To the Jailer of Kenton County (City):

You are commanded to receive Eddie Thompson and safely keep him subject to bail, having been sentenced to [illegible] on the charge of Grand Larceny

By Order of District Court of Kenton County.

Given under my hand as Clerk of the Kenton District Court, this 27 day of Sept, 19 78

Wm. A. Meehan, CLERK

By: Deputy Clerk D.C.

Best Copy Available